

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 07-08-2009 BY 60324 UCBAW/DK/SBS

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Director, FBI

SAC, Miami

Attn: Principal Legal Advisor

REQUEST FROM HOUSE SUBCOMMITTEE, ON CRIME FOR FBI DOCUMENTS REGARDING THE ARROW AIR PLANE CRASH OF 12/12/85 IN GANDER, NEWFOUNDLAND, CANADA

For the information of Miami, Chairman William J. Hughes, Subcommittee on Crime, House Committee on the Judiciary, requested that the FBI provide the Subcommittee with documents, reports, photographs, laboratory results, and film relating to the crash of Arrow Air in Gander, Newfoundland, Canada on 12/12/85.

One of the FBIHQ files provided to the Subcommittee was HQ 163-56160, captioned Arrow Air DC 8-63, Gander, NewFoundland, December 12, 1985: Foreign Police Cooperation -General Criminal matters. This file documents interviews of Arrow Air employees, conducted at and At this time, the Subcommittee is requesting information on [another employee of Arrow Air. claims to have been interviewed concerning the crash by a Special Agent from the Homestead Resident Agency, Miami Field Office. Miami is requested to review Miami main file for any interview of [and to check all indices for references to Any questions should be directed to Legal Technician , Legal Counsel Division, Civil Discovery Review Unit II, extension 3594. Rm. 7240, TL 245 b6 1 Rm. 7240, TL 245 b7C 1 CDRU Rm. 5442, TL 243 1 1 Rm. 5442, TL 243

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the Gander crash and took a swipe at the FBI's investigation of the crash, calling it "unacceptable if not also unbelievable."

DAD Nicholas V. O'Hara examined the FBI's response to the Gander crash prior to testifying before the Subcommittee on 12/5/90 to that effect. National Transportation Safety Board (NTSB) investigator, also testified and presented a very articulate reiteration of his investigation with Canadian Air Safety Board (CASB) investigators at Gander and concluded the Gander crash was caused by pilot error. Chairman Hughes did not readily accept this theory or the Canadian Air Safety Board Review Committee (CASBRC) theory that icing and an overweight condition of the aircraft contributed to the crash. Chairman Hughes appeared to support the minority opinion of the CASBRC that an in-flight explosion or fire was the cause of the crash although there is absolutely no evidence of such from the resultant investigation of the crash. Chairman Hughes chastised the U.S. Government representatives who were present at the hearing and/or who were at Gander, suggesting they had not done their jobs; however, his conclusions do not match up with the facts as we know them which do suggest that U.S. Government representatives performed their missions well at Gander and later.

Chairman Hughes noted that his subcommittee recommendations may encompass a request for the FBI to review all or a portion of the reports and/or physical evidence recovered in this investigation. However, since there is no evidence of a crime at this point, no commitment was made at the hearing concerning such a review and the FBI will await the subcommittee report before making any final determination relating to this issue.

RECOMMENDATION: None, for information only.

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<u>DETAILS</u>: The following information is provided in response to your request as to the factual situation surrounding the 11/29/90 Jack Anderson and Dale Van Atta column in <u>The Washington Post</u> captioned "Unfinished Business: Gander Crash Probe."

As is typical of Jack Anderson, the column is filled with his reporting of half truths, rumor, and innuendo; however, it does appear that a report on the 12/12/85 Gander crash has been prepared by investigators for the Subcommittee on Crime of the House Judiciary Committee which questions the effectiveness of the U.S. Government's investigative response to the Gander Apparently a copy of this report was "leaked" to Jack Anderson and others and this was the apparent basis for his column of 11/29/90. The FBI does not have a copy of this although one has been requested. Based on an invitation previously received by the FBI to appear before the Subcommittee on Crime, DAD Nicholas V. O'Hara, Criminal Investigative Division, subsequently testified before the Subcommittee on 12/5/90 concerning the FBI's role in the Gander crash. apparent from the outset of the Subcommittee's hearing, which began on 12/3/90, and from the tenor of the "leaked" portions of their report, that the Subcommittee was searching for information which would bolster their contention that there was information pertinent to the 12/12/85 crash of Arrow Airlines, Registration Number N950JW, that had not been reported and that the Government was withholding information about the crash which suggested the crash resulted from an act of sabotage, terrorism, or other criminal activity. Such an allegation is entirely inconsistent with the facts of this case as I know them and I am not aware of any information which came to light either during the Subcommittee hearing or during the investigation by the Canadians which indicated anything more than the crash was an accident, most likely caused by a combination of pilot error, overweight aircraft, and icing conditions.

In preparing for his appearance before the Subcommittee, DAD O'Hara reviewed the Identification Division file, the Foreign Police Cooperation file, and interviewed several individuals who were on the initial FBI Sabreliner flight

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from Washington, D.C. to Gander, Newfoundland, on 12/12/85, not only for the purpose of reeducating himself to the factual situation surrounding the crash but also to reexamine our response to the crash to make certain that the FBI had properly discharged its responsibilities relating to this tragedy.

For your information and by way of background, on
12/12/85, I learned of the crash early in the day and
telephonically contacted Ottawa Legat
furnished him the details as I knew them at the time and directed
him to make arrangements with the appropriate Canadian
authorities and our Embassy in Ottawa to go to the crash scene at
Gander. After receiving the appropriate authorizations, and
in the second se
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learned that it would
take him approximately 12 hours by commercial flight to fly to
Gander from Ottawa. I thereby directed that the Sabreliner
depart Washington, pick up Legat and go directly to
Gander. On board the aircraft when it left Washington were two
pilots [including SSA b70
Latent Fingerprint Section, b70
Identification Division (representing the Disaster Squad);
(Crime Scene Photographer); and SSA (since
(Since
retired), metallurgist, Laboratory Division. SSA
Explosives Unit, Laboratory Division, was unable to
immediately go to Gander; however, he joined the group in Gander
on 12/13/85. Upon arrival in Gander the evening of 12/12/85, the
group immediately set out, under the leadership of Legat
to determine the available facts concerning the crash.
It was immediately brought to Legatattention that
the aircraft was believed to be overweight, and that icing
conditions probably contributed to the crash.

the crash and the scope of the investigation being conducted by

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and others

were given a briefing with regard to additional facts concerning

Subsequently, on 12/13/85, Legat

CASB. Discussion also ensued with regard to the body identification process. Initially, the Canadians intended to conduct all activity regarding body identification at Gander; however, on 12/14/85, a decision was made to remove all the bodies of the American servicemen and servicewomen to Dover, Delaware, Air Force Base for the examination and identification process. Members of the FBI Disaster Squad subsequently reported to Dover and assisted in the identification process over a period of several days. It is noted that 248 military personnel perished in the crash, along with 8 Arrow Airlines crew members. There is no indication any of the victims survived the initial crash impact.

While at Gander, Newfoundland, FBI personnel were not allowed access to the crash scene with the exception of who did go to the crash scene. Shortly after the arrival of the FBI team as noted above, facts developed indicating not only that the Canadians were well in control of the crash scene from an investigative and administrative standpoint, but further, no information had surfaced suggesting a crime had been committed. Available facts, as noted above concerning icing conditions, overweight, and pilot error, led on-scene authorities to the early premise of an accident. This information was supported by the fact that the Canadians had examined the aircraft wreckage with the assistance of a trained bomb dog team; had located witnesses who had noted no pre-impact explosion or fire; and had carefully examined the aircraft's flight path to the crash scene and determined that there was no pre-impact debris from the aircraft which would support a theory that an inflight explosion or fire had occurred prior to the crash. that regard, the Canadians had walked the flight path in a shoulder-to-shoulder fashion to closely examine the in-flight path of the aircraft looking for debris such as an in-flight explosion or fire would likely have caused. None was found or noted during this careful search of the flight path until after the aircraft struck the trees in its descent and then as the aircraft was opened by the trees impacting on it, items from the aircraft and its interior began to be expelled or dispersed as the plane fell to the earth. Regarding a theory proposed by dissenting members of the CASB Review Committee (CASBRC) who did

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not agree with the majority decision of the CASBRC that icing and overweight were believed to be the primary causes of the crash, one of the theories presented by the dissenting minority members was that of a pre-impact bomb blast or in-flight fire. Specifically dealing with that point, there is absolutely no evidence of such an occurrence. Further, the forensic examination of the deceased service personnel failed to locate any sooty substance or presence of smoke in the lungs of the deceased victims which, according to the medical experts, would have been present had there been an in-flight fire prior to The theory of an in-flight explosion prior to impact is impact. also negated by many facts, one of which being the absence of debris on the runway, another the absence of "alerting" by the bomb dogs at the crash scene, and also the absence of any explosive residue or characteristics of an explosion from the wreckage or aircraft debris when it was examined by forensic explosive experts in Ottawa and on the scene at Gander.

DAD O'Hara, in telephonically discussing the	
in Gander, Newfoundland, on	12/4-5/90,
prior to his testimony and with particular reference to	
theory, was advised by	
	that he
arrived at the site approximately 30 minutes after the	crash and
found ice on the roads in the area of the crash scene.	
prior to leaving his residence, which is approximately	10 minutes
from the crash scene, scraped approxima	tely 1/4
inch of ice from his automobile's windshield. While en	route to
the crash scene, drove by his office a	t the
airport, parked and went inside. When he emerged from	his office
approximately five minutes later he had to once again s	crape his
windshield due to a new <u>ice buildup on t</u> he windshield d	uring the
brief office stopover. noted that	
a Railway Engineer who was op	
train engine in the airport area in view of the runway	
morning of the fatal crash and who observed the initial	roll of
Arrow Airlines, Registration Number N950JW as it taxied	
the crash also noted to investigators that there was a	

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drizzle falling at the time he was observing the Arrow Air Aircraft taxi, which was freezing and adhering to his train engine.

telephonically advised DAD O'Hara on 12/4/90 that when he
responded to the crash scene shortly after 7:00 a.m. on 12/12/85
he also had to scrape between 1/8 and 1/4 inch of ice from his
car's windshield before leaving his residence.
rogalled driving in fracting win to the group of the growth.
recalled driving in freezing rain to the scene of the crash. He
diso described
the bodies would be returned to Dover,
Delaware, for the identification process. at no time since the crash of 12/12/85 has any
information
indicating anything
other than an accident was responsible for this crash
no evidence of a crime has
been discovered during the five years since this investigation.

I offer the above to you, Director Sessions, so that you may be aware of what was initially available to our Investigators on 12/12-14/85 and what was subsequently relayed to me prior to the ultimate determination being made on 12/14/85 that the FBI representatives should return to their respective offices of assignment since the investigation was proceeding in an orderly, logical fashion and no evidence of a crime was present.

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Concerning the comment in the Jack Anderson column that George Seidlein the NTSB on-scene investigator, was "mysteriously removed from the investigation" which Jack Anderson then wove into a theory that the Government was not being very forthcoming, did not do a good job in the crash, and was hiding something, DAD O'Hara was present in the Subcommittee room as was interviewed by Chairman Hughes on 12/5/90. was very articulate in his presentation and answers to questions posed, noting that the NTSB had worked closely with the Canadians in the follow-up investigation of the crash and that there was no hidden agenda with regard to the apparent noninvolvement of [<u>lin</u>the subsequent review process concerning this crash. described how he had received what amounts to an "office of preference" transfer by NTSB to his home in the midwest and this was why he had left the Washington, D.C. area. Although Chairman Hughes appeared to be looking for evidence of hostility between and his former employer, the NTSB, none was found during his examination of basic conclusion, which he clearly explained to the Subcommittee, was that the 12/12/85 crash at Gander, Newfoundland, was that the crash was caused by "pilot error." appeared obvious that this conclusion by and his observations as to the cause of the crash did not fit the Subcommittee's preconceived notions that there was a hidden agenda by U.S. and Canadian authorities and investigators or that the U.S. Government did not do its job in the investigation and this was clearly upsetting to Chairman Hughes. Although DAD O'Hara did not sit through the entire Subcommittee hearing, from information obtained by other representatives of the FBI who did sit through the hearing, the Subcommittee was unable to substantiate its theory that the U.S. Government had mismanaged their part of the investigation or that evidence of a crime was present and was overlooked or ignored by the Canadian and U.S. Investigators.

During his testimony on 12/5/90, DAD O'Hara appeared with a Department of State representative and an FAA representative and was before the Subcommittee approximately two

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hours and fifteen minutes. During that timeframe, he was closely examined by Chairman Hughes and carefully described the FBI's role in the investigation as set forth earlier in this memo.

DAD O'Hara has personally advised me that in his opinion, the FBI representatives on scene responded appropriately, evaluated the situation at Gander carefully, and

made a logical determination that since they had no access to the crash scene and actually could add little to the investigative process, it was appropriate to return to their respective assignments.

In summing up the hearing on 12/5/90, Chairman Hughes noted his displeasure to the Subcommittee and the audience that the subcommittee report alluded to by Jack Anderson had been "leaked" prior to the Subcommittee hearing. It also appeared to the attendees at the hearing that the pre-release of the report then forced the Subcommittee to stay with conclusions they had reached before they had examined witnesses in the Subcommittee forum and thus gave them little flexibility for change during the As expected, Chairman Hughes chastised the U.S. Government representatives present at the hearing and/or who were at Gander suggesting they had not done their jobs; however, this conclusion on his part does not match up with the facts as we know them from the investigation and our contacts. Chairman Hughes noted that the resultant recommendations which will be set forth by the Subcommittee at a later date may encompass a recommendation that the FBI review all or a portion of the reports and/or physical evidence recovered in this investigation. I would suggest that in the absence of any evidence suggesting a crime was committed or connected with this fatal crash, we should evaluate any such recommendation carefully and coordinate closely with the FBI Laboratory Assistant Director before a response to this request is made. Although the minority opinion of the CASBRC indicates criminality was involved in the 12/12/85 crash, a judicial official reviewing the CASBRC report noted that the minority opinion had absolutely no evidence to support such a conclusion.

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At this time, the only remaining activity in this inquiry is to await receipt of the Subcommittee recommendations to determine how they may impact on FBI responsibilities. Congressional Affairs will closely follow this aspect and advise accordingly.

The Washington Post

DATE: 11/29/90

PAGE: 13-13

JACK ANDERSON and DALE VAN ATTA

Unfinished Business: Gander Crash Probe

ive years after a charter plane crashed in Gander, Newfoundland, and killed 248
American soldiers, the U.S. government finally will have to defend its dubious account of what happened.

A tightly held report of a congressional investigation criticizes the National Transportation Safety Board's handling of the case. And it takes a swipe at the FBI's investigation of the crash, calling it "unacceptable, if not also unbelievable."

The report was strong enough to inspire the House Judiciary crime subcommittee to order a hearing on the crash for next Tuesday. The hearing finally may give an open forum to the whispered rumors of a terrorist bombing.

The government nearly tripped on itself in a rush to blame ice for the crash of the DC-8 on Dec. 12, 1985. That theory was accepted almost three years later by a report from the Canadian Aviation Safety Board, which led the investigation. But four of the nine board members felt so strongly the conclusion was wrong that they issued their own report. They said an in-flight explosion may have caused the crash.

The U.S. government has been strangely reluctant to take responsibility for a thorough investigation. The Army says it only handled the body identification. The National Transportation Safety Board says it only advised the Canadians. The FBI says it left Gander two days after the crash because there was no sign of terrorism, and the Canadians had everything under control.

Anyone who tries to get more than that out of the administration gets the runaround. When congressional investigators were assigned to look

into the case, they got the same treatment. Their report, obtained by our associate Jim Lynch, calls the NTSB "grossly negligent."

That report also notes that the safety board's chief investigator on the case, George Seidlein, was mysteriously removed from the investigation.

NTSB officials told the congressional investigators that Seidlein "was not good at public relations." But Seidlein said he was not asked to review the final Canadian report because he could not accept the icing theory, and it was "unlikely his views would have been accepted" by the safety board, the investigative report says.

As for the FBI's performance, the congressional investigators said they did not buy the docile account that the FBI left Gander because the Canadians were on top of the case. "Such a course of conduct on the part of the FBI is, in the view of the subcommittee, unacceptable if not also unbelievable," the report says:

If the FBI bowed out quickly, it still left a massive report on the crash, most of which is censored.

The report goes soft on the Army, accepting the story that the Army played only a small role in the investigation. But we have seen documents indicating that the Army was doing more than attaching toe-tags to bodies. A week after the crash, an internal memo to the Army deputy chief of staff for operations notes that the Army wanted to use a "helicopter-borne, multispectrum prototype minefield sensor" to inspect the crash site. Such equipment is used in searches for explosives.

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 07-08-2009 BY 60324 UCBAW/DK/SBS Airtel from Director, FBI to SAC, Miami, Attn: Principal Legal Advisor

REQUEST FROM HOUSE SUBCOMMITTEE ON CRIME FOR FBI DOCUMENTS REGARDING THE ARROW AIR PLANE CRASH OF 12/12/85 IN GANDER, NEWFOUNDLAND, CANADA Re:

NOTE: ON 2/15/90 SSA		
requested Civil Disco	very Review Unit (CDRU), Legal Counsel to	.b6
	163-56160 for release to the Subcommittee	.bo .b70
on Crime. Following	the release SSA requested CDRU to	D/I
conduct a search for	all Miami and HQ references to	